

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RICHARD J. JOSEPH and U.S. POSTAL SERVICE,
POST OFFICE, Youngstown, Ohio

*Docket No. 96-2279; Submitted on the Record;
Issued July 15, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether appellant has met his burden of proof to establish that he had any disability commencing on May 20, 1994 causally related to his employment injury of the same date.

On May 23, 1994 appellant, then a 61-year-old maintenance custodian, filed a claim for a left knee injury sustained on May 20, 1994 when he slipped in a hole while cutting grass. The Office of Workers' Compensation Programs accepted the claim for a left knee sprain and a medial meniscus tear. Appellant continued with his work for the remainder of his shift but sought medical attention on May 23, 1994.

In an Office report form dated May 23, 1994, Dr. James F. Ervin, a Board-certified family practitioner, noted minimal findings on examination, diagnosed a mild sprain and indicated that appellant was able to continue regular work. Dr. Kenneth M. Cardlin, a Board-certified family practitioner, also examined appellant on May 23, 1994, diagnosed a healing mild left knee sprain/strain and discharged appellant with no restrictions.

By report dated July 13, 1994, Dr. Cardlin noted that appellant continued to have "some mild aching pain," and that he had been hospitalized for surgery not associated with this injury. He diagnosed "healing left knee sprain.... Doubt any internal derangement." Dr. Cardlin indicated that although there were no restrictions regarding his knee injury, he was not working due to the medical leave.

In a medical report dated September 6, 1994, Dr. Michael J. Miladore, a Board-certified orthopedic surgeon, noted his findings on examination and diagnosed a left knee sprain with possible meniscal lesion. Dr. Miladore recommended physical therapy and advised that an arthroscopy may be needed if appellant has mechanical symptoms. In a report dated October 6, 1994, Dr. Miladore noted that appellant was still having pain despite physical therapy and recommended arthroscopic surgery.

The record includes a medical certification and clearance to return to work dated September 21, 1994, in which Dr. Mounir Awad, a Board-certified surgeon, indicated that appellant had been under his care for "carcinoma colon and colon resection followed by chemotherapy." Dr. Awad further stated that appellant had been incapacitated from June 3, 1994 to September 25, 1994. He indicated that appellant could return to full duty effective September 26, 1994.

In a letter dated October 14, 1994 to Dr. Miladore, the Office authorized arthroscopic left knee surgery with meniscectomy.

On November 2, 1994 appellant filed a Form CA-7, claim for compensation on account of traumatic injury, for 720 hours of wage loss for the period May 20, 1994 to "present."

In a November 29, 1994 letter, the Office advised appellant of the additional medical and factual evidence needed to establish his claim, including his physician's rationalized statement supporting a causal relationship between the claimed period of disability and his accepted employment-related condition.

The Office subsequently received medical records related to appellant's December 2, 1994 left knee surgery.

In an attending physician's report form dated December 6, 1994, Dr. Miladore indicated that appellant was totally disabled from December 2, 1994 to January 31, 1995 and that he would be able to resume regular work on February 1, 1995.

On January 26, 1995 the employing establishment advised the Office that appellant elected disability retirement effective December 30, 1994.

In a May 11, 1995 letter, the Office advised appellant that he was entitled to buy back leave covering the period December 2, 1994 through December 30, 1994 for a total of 160 hours annual leave and 8 hours of holiday pay.

By decision dated May 30, 1995, the Office found that appellant was not entitled to compensation for the periods May 20 through December 1, 1994 and any time subsequent to December 30, 1994 on the grounds that the evidence failed to demonstrate that the claimed disability was causally related to his injury.

By letter dated June 5, 1995, appellant, through his representative, requested an oral hearing before an Office hearing representative. A hearing was held on February 13, 1996, at which time appellant testified that although Dr. Awad had indicated that he could return to work on September 16, 1994, he was too ill to work.

By decision dated June 24, 1996, the Office hearing representative affirmed the Office's May 30, 1995 decision on the grounds that the medical evidence of record was insufficient to establish that appellant was disabled for the periods May 21 to December 1, 1994 and any time after December 31, 1994 due to his accepted injury.

The Board finds that appellant has failed to meet his burden of proof to establish that he had any disability on and after May 20 to December 1, 1994 and any time after January 31, 1995 causally related to his May 20, 1994 employment injury.

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was filed within the applicable time limitation of the Act.² The claimant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition, for which compensation is sought is causally related to a specific employment incident or to specific conditions of the employment. As part of this burden, the claimant must present rationalized medical opinion evidence, based upon a complete and accurate factual and medical background, establishing causal relationship.³ The mere manifestation of a condition during a period of employment does not raise an inference of causal relationship between the condition and the employment.⁴ Neither the fact that the condition became apparent during a period of employment nor the claimant's belief that the employment caused or aggravated his condition is sufficient to establish causal relationship.⁵

In this case, the record shows that appellant sustained a left knee sprain on May 20, 1994. Although appellant argues in his Form CA-7 that he is entitled to continuation of pay from May 20, 1994 onward, the record is devoid of any medical opinion evidence supporting an injury-related disability prior to December 2, 1994, the date appellant underwent left knee surgery. Appellant was injured on May 20, 1994 and did not seek medical attention till May 23, 1994. On May 23, 1994, both Dr. Ervin and Dr. Cardlin indicated that appellant could return to his regular duties. Thus, contrary to appellant's contention that he is entitled to continuation of pay for May 21 and May 22, 1994 the record does not contain any medical evidence supporting an injury-related disability and, therefore, appellant has not discharged his burden of proof.

By report dated December 6, 1994, Dr. Miladore, appellant's attending orthopedic surgeon, indicated that appellant was totally disabled from December 2, 1994 to January 31, 1995. He further indicated that appellant would be able to resume regular work on February 1, 1995. The evidence of record indicates that appellant retired effective December 30, 1994. The Office had advised appellant that he was entitled to buy back leave covering the period December 2 through December 30, 1994. There is no medical evidence in the record supporting injury-related disability beyond January 31, 1995. Thus, the Office properly determined that appellant was entitled to leave restoration through December 30, 1994. Furthermore, as the evidence of record reflects that appellant was totally disabled due to his accepted condition until January 31, 1995, the Office hearing representative properly determined

¹ 5 U.S.C. §§ 8101-8193.

² *Donald R. Vanlehn*, 40 ECAB 1237, 1238 (1989).

³ *Brian E. Flescher*, 40 ECAB 532, 536 (1989); *Ronald K. White*, 37 ECAB 176, 178 (1985).

⁴ *Edward E. Olson*, 35 ECAB 1099, 1103 (1984).

⁵ *Bruce E. Martin*, 35 ECAB 1090, 1093 (1984); *Dorothy P. Goad*, 5 ECAB 192, 193 (1952).

that appellant was entitled to an election of benefits for the period from December 31, 1994 to January 31, 1995.

Thus, as appellant has failed to provide any rationalized medical evidence establishing that he sustained a medical condition or disability on and after May 20 to December 1, 1994 and any time after January 31, 1995 causally related to his May 20, 1994 employment injury or any other factors of his employment, he has failed to discharge his burden of proof.

The June 24, 1996 and the May 30, 1995 decisions of the Office of Workers' Compensation Programs are affirmed.⁶

Dated, Washington, D.C.
July 15, 1998

George E. Rivers
Member

David S. Gerson
Member

Bradley T. Knott
Alternate Member

⁶ The Office's May 30, 1995 decision was affirmed as modified by the Office's June 24, 1996 decision.